

**§ 843.18 Inability to comply.**

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under part 845 of this chapter and of the duration of the suspension of a permit under § 843.13(c).

**§ 843.20 Compliance conference.**

(a) A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and § 842.11.

(b) The Office may accept or refuse any request to conduct a compliance conference under paragraph (a). Where the Office accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act of any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Office or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

**§ 843.22 Enforcement actions at abandoned sites.**

The Office may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in § 842.11(e) of this chapter, if abatement of the violation is required under any previously issued notice or order.

[53 FR 24882, June 30, 1988]

**§ 843.25 Energy Policy Act enforcement in States with approved State programs.**

(a) *State-by-State determinations.* By July 31, 1995, OSM will determine for each State with an approved State regulatory program whether:

(1) Direct Federal enforcement of the Energy Policy Act and implementing Federal regulations will occur under paragraph (b) of this section with respect to some or all surface coal mining operations in each State, or

(2) The procedures of §§ 843.11 and 843.12(a)(2) will apply to State enforcement of the Energy Policy Act, or

(3) A combination of direct Federal enforcement and State enforcement will occur.

(4) Before making this determination, OSM will consult with each affected State and provide an opportunity for public comment. OSM will publish its determination in the FEDERAL REGISTER.

(b) *Interim Federal enforcement.* (1) If OSM determines under paragraph (a) that direct Federal enforcement is necessary, §§ 817.41(j), 817.121(c)(2), and 817.121(c)(4) of this chapter will apply to each underground mining operation subject to that determination that is conducted in a State with an approved State regulatory program.

(2) If OSM determines under paragraph (a) of this section that direct Federal enforcement is necessary, the provisions of § 843.12(a)(2) will not apply to direct Federal enforcement actions under this paragraph (b). When, on the basis of any Federal inspection under this paragraph, an authorized representative determines that a violation of § 817.41(j) or § 817.121(c)(2) exists, the authorized representative must issue a notice of violation or cessation order, as appropriate.